In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1252

DONALD L. WAMP, ET AL., PETITIONERS

v.

CHATTANOOGA HOUSING AUTHORITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A15-A17) is reported at 527 F. 2d 595. The opinion of the district court (Pet. App. A1-A12) is reported at 384 F. Supp. 251.

JURISDICTION

The judgment of the court of appeals was entered on December 5, 1975 (Pet. App. A18-A19). The petition for a writ of certiorari was filed on March 4, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the courts below correctly concluded that petitioners lacked standing under state law and that, as a consequence, the district court upon removal was without jurisdiction of this action.

STATEMENT

Petitioners, three individuals and a non-profit corporation organized under the laws of Tennessee, brought this action in the Chancery Court of Hamilton County, Tennessee, naming as defendants the City of Chattanooga and the Chattanooga Housing Authority ("the municipal respondents"), a real estate developer, its lender, and the holder of its deed of trust ("the private respondents"), and the United States on behalf of the Department of Housing and Urban Development and the Federal Housing Administration ("the federal respondents") (C.A. App. 5a-8a, 13a-14a).[1] Petitioners sought to enjoin the construction of a federally-assisted apartment complex on Cameron Hill, which is located within an urban renewal area in Chattanooga, Tennessee (Pet. App. A1-A2). They also sought to cancel the deeds and contracts for the construction project and to compel the reevaluation, resolicitation and redisposition of the property involved (Pet. App. A2). Petitioners did not seek any affirmative relief against the federal respondents.

On motion of all respondents, the action was removed to the United States District Court for the Eastern District of Tennessee. Petitioners then sought to amend their complaint to allege that the federal respondents' failure to file an environmental impact statement for the housing project violated the National Environmental Policy Act, 83 Stat. 853, 42 U.S.C. 4332(2)(c) (Pet. App. A2; C.A. App. 39a-42a). The amended complaint sought to be filed by petitioners also alleged that members of the petitioner corporation, the Moccasin Bend Association, had used the park that had existed on Cameron Hill before renewal of the area had begun.

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[1] "C.A. App." refers to the joint appendix filed in the court of appeals.

Following an evidentiary hearing, the district court dismissed the action for lack of jurisdiction (Pet. App. A13-A14). The court held that the existence of jurisdiction in the court from which the action had been removed was an essential prerequisite to its jurisdiction upon removal, and that it was without jurisdiction because petitioners did not have standing under Tennessee law (Pet. App. A2-A12). The court of appeals affirmed (Pet. App. A15-A19). In addition to sustaining the district court's holding that petitioners lacked jurisdiction under Tennessee law, the court of appeals indicated that they also lacked standing under federal law (Pet. App. A17, n. 1).[2]

ARGUMENT

Since the jurisdiction of a federal court over an action removed from a state court depends upon whether the state court possessed jurisdiction, the courts below properly sought to determine whether petitioners had standing to bring this action under Tennessee law. The courts' holding that petitioners lacked standing under Tennessee law is correct and, in any event, is not an issue warranting review by this Court. Petitioners also lacked standing under federal law and, as a consequence, the choice-of-law question discussed by petitioners is not properly presented in this case.

1. It has long been settled, as stated by Mr. Justice Brandeis in *Lambert Co.* v. *Baltimore and Ohio R.R. Co.*, 258 U.S. 377, 382, that the jurisdiction of a federal court

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[2]While the case was pending in the court of appeals, the municipal and private respondents advised the court that the construction that petitioners sought to enjoin had been substantially completed and that some of the units in the housing project were occupied. Joint Brief of Defendants-Appellees, City of Chattanooga and the Chattanooga Housing Authority, p. 6; Combined Brief for Defendants Appellees Cameron-Oxford Associates, Advance Mortgage Corp., Milligan-Reynolds Guaranty Title Agency, Inc., pp. 7-8.

upon removal "is, in a limited sense, a derivative jurisdiction" and that "[i]f the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none, although it might in a like suit originally brought there have had jurisdiction." See 1A J. Moore, *Federal Practice*, para. 0.157[3] (2d ed., 1974), and cases discussed therein. Lack of the requisite injury-in-fact necessary for standing is a jurisdictional defect under Tennessee law (see *Badgett* v. *Rogers*, 222 Tenn. 374, 436 S.W. 2d 292), as well as federal law (see *Warth* v. *Seldin*, 422 U.S. 490, 498-499). Accordingly, the courts below correctly concluded that whether the district court had jurisdiction depended upon whether petitioners had standing in the Tennessee Chancery Court under state law.[3]

2. The courts below correctly determined that petitioners lacked standing under Tennessee law. As the Tennessee Supreme Court stated in *Badgett* v. *Rogers*, *supra*, 222 Tenn. at 379, 436 S.W. 2d at 294:

> As a general rule of long standing in Tennessee, individual citizens and taxpayers may not interfere with, restrain or direct official acts, when such citizens fail to allege and prove damages or injuries to themselves different in character or kind from those sustained by the public at large.

The allegations made by petitioners do not satisfy this general test. Petitioner Moccasin Bend Association originally alleged only that it was concerned with preservation of historic and scenic landmarks, including those

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[3]Petitioners also contend (Pet. 28-31) that the district court erred by not allowing them to amend their complaint or, alternatively, not remanding the case to the state court for consideration of the motion to amend. As *Lambert* makes plain, however, the decisive question upon removal of an action is whether the state court had jurisdiction before removal. An amendment offered subsequent to removal cannot cure a jurisdictional defect that existed prior to removal.

located within the Cameron Hill project (Pet. App. A6; C.A. App. 6a). The Association unsuccessfully sought to amend the complaint to allege additionally that its members had used the park that had been located on Cameron Hill prior to urban renewal (C.A. App. 39a). But these interests are no different than those that might be asserted by the public at large, and petitioners concede (Pet. 17) that the Tennessee Supreme Court specifically held in earlier litigation that the Association lacked standing to challenge previous urban renewal activity on Cameron Hill which destroyed the park. The three individual petitioners asserted an interest as taxpayers, but only petitioner Wamp was shown to pay property taxes in Chattanooga (Pet. App. A6). And any effect on his taxes attributable to the Cameron Hill project is not special, but is similar to the effect, if any, on all other taxpayers in the city (Pet. App. A7; Tr. 122, 133).[4] Finally, petitioner Wamp alleged that if the Cameron Hill project were reopened for bidding he would submit a bid for the project (C.A. App. 21a; Tr. 289-290). Wamp admitted, however, that he had chosen not to participate in the original bidding for the Cameron Hill project (Tr. 280-281). Thus, petitioners failed to allege special injury of a type satisfying Tennessee's general rule of standing to challenge official actions.

The Tennessee Supreme Court recognizes two exceptions to its general standing rule, covering situations in which "it is asserted that the assessment or levy of a tax is illegal or that public funds are misused or unlawfully diverted from stated purposes." *Badgett* v. *Rogers*, *supra*, 222 Tenn. at 380, 436 S.W. 2d at 294. But as the courts below correctly concluded (*e.g.*, Pet. App. A9-A12), petitioners' claims do not fall within either exception. While petitioners contend (Pet. 20-21) that another exception should be made

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[4] "Tr." refers to the transcript of proceedings in the district court.

for alleged misuse of public property, the Tennessee courts have not recognized any such exception. Cf. *Walldorf* v. *City of Chattanooga*, 192 Tenn. 86, 237 S.W. 2d 939. Thus, petitioners lacked standing under Tennessee law.

3. Petitioners also lacked standing under federal law. Petitioner Moccasin Bend Association did not allege, in either the original or proposed amended complaint, that its members will be specifically and adversely affected by the Cameron Hill housing project, which occupies only a part of the Cameron Hill site. Cf. *Sierra Club* v. *Morton*, 405 U.S. 727. A new park will occupy another portion of the site (Pet. 12). Furthermore, none of the individual plaintiffs alleged a "logical nexus" between his status as a taxpayer and his opposition to the housing project. See *United States* v. *Richardson*, 418 U.S. 166; *Schlesinger* v. *Reservists Comittee to Stop the War*, 418 U.S. 208. Finally, petitioner Wamp's asserted interest in submitting a proposal for redeveloping the Cameron Hill site, after having failed earlier to submit a proposal, is too tenuous and speculative an interest to give him standing. Cf. *Warth* v. *Seldin*, *supra*, 422 U.S. at 514-517.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1976.

DOJ-1976-05